



This document is scheduled to be published in the Federal Register on 11/20/2012 and available online at <http://federalregister.gov/a/2012-27906>, and on FDsys.gov

<RULE>

<PREAMB>

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005-62; FAR Case 2012-027; Item III; Docket 2012-0027,

Sequence 01]

RIN 9000-AM43

Federal Acquisition Regulation; Free Trade Agreement-Panama

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States–Panama Trade Promotion Agreement. This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama.

DATES: Effective date: **[Insert date of publication date in the Federal Register.]**

Comment date: Interested parties should submit written comments to the Regulatory Secretariat on or before **[Insert 60 days after publication in the Federal Register]** to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-62, FAR Case 2012-027, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2012-027". Select the link "Submit a Comment" that corresponds with "FAR Case 2012-027."

Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2012-027" on your attached document.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAC 2005-62, FAR Case 2012-027, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202-219-0202, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-62, FAR Case 2012-027.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending FAR part 25 and the corresponding provisions and clauses in part 52 to implement the United States–Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note).

This Trade Promotion Agreement is designated in the FAR as the Panama Free Trade Agreement (FTA). This FTA provides for—

- Waiver of the applicability of the Buy American statute (41 U.S.C. chapter 83) for some foreign supplies and construction materials from Panama; and
- Applicability of specified procurement procedures designed to ensure fairness in the acquisition of supplies and services (see FAR 25.408).

II. Discussion and analysis

This interim rule adds Panama to the definition of “Free Trade Agreement country” in multiple locations in the FAR.

The Panama FTA covers acquisitions of supplies and services equal to or exceeding \$202,000. The threshold for the Panama FTA is \$7,777,000 for construction contracts. The Panama FTA threshold for supplies and services is higher than the threshold for supplies and services for most of the FTAs (\$77,494), and equals the Bahrain, Morocco, Oman, and Peru FTA thresholds for supplies and services (\$202,000).

The excluded services for the Panama FTA are the same as for the Bahrain FTA, Dominican Republic–Central American FTA, Colombia FTA, Chile FTA, NAFTA, Oman FTA, and Peru FTA.

III. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Although the rule now opens up Government procurement to the goods and services of Panama,

DoD, GSA, and NASA do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at Defense Federal Acquisition Regulation Supplement (DFARS) 225.401-70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt. FAR 19.502-2 states that acquisitions of supplies or services with an anticipated dollar value between \$3,000 and \$150,000 (with some exceptions) are automatically reserved for small business concerns.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAC 2005-62, FAR Case 2012-027), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply, because the interim rule affects the certification and information collection requirements in the provisions at

FAR 52.212-3, 52.225-4, 52.225-6 and 52.225-11 currently approved under the Office of Management and Budget Control Numbers 9000-0136, titled: Commercial Item Acquisition, 9000-0130, titled: Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate, 9000-0025, titled: Trade Agreements Certificate, and 9000-0141, titled: Buy American-Construction, respectively. The impact, however, is negligible because it is just a question of which category offered goods from Panama would be listed under.

VI. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the effective date of the Free Trade Agreement with Panama is October 31, 2012. This is a reciprocal agreement, approved by Congress and the President of the United States. It is important for the United States Government to honor its new trade obligations to Panama, as Panama in turn honors its new trade obligations to the United States. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments

received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52.

Government procurement.

Dated: November 9, 2012

LAURA AULETTA,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 25—FOREIGN ACQUISITION

25.003 [Amended]

2. Amend section 25.003 by removing from both the definition of "Designated country" in paragraph (2), and the definition of "Free Trade Agreement country" the words "Oman, Peru," and adding "Oman, Panama, Peru," in their place.

3. Amend section 25.400 by revising paragraphs (a)(2)(x) and (a)(2)(xi); and adding paragraph (a)(2)(xii) to read as follows:

25.400 Scope of subpart.

(a) * * *

(2) * * *

(x) Korea FTA (the United States-Korea Free Trade Agreement Implementation Act (Pub. L. 112-41) (19 U.S.C 3805 note));

(xi) Colombia FTA (the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) (19 U.S.C. 3805 note)); and

(xii) Panama FTA (the United States–Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note));

* * * * *

25.401 [Amended]

4. Amend section 25.401 by removing from paragraph (b), in the table, in the heading, "Oman FTA, and Peru FTA" and adding "Oman FTA, Panama FTA, and Peru FTA" in its place.

5. Amend section 25.402 by revising the table in paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$202,000	\$202,000	\$7,777,000
FTAs			
Australia FTA	77,494	77,494	7,777,000
Bahrain FTA	202,000	202,000	10,074,262
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	77,494	7,777,000

Chile FTA	77,494	77,494	7,777,000
Colombia FTA	77,494	77,494	7,777,000
Korea FTA	100,000	100,000	7,777,000
Morocco FTA	202,000	202,000	7,777,000
NAFTA			
–Canada	25,000	77,494	10,074,262
–Mexico	77,494	77,494	10,074,262
Oman FTA	202,000	202,000	10,074,262
Panama FTA	202,000	202,000	7,777,000
Peru FTA	202,000	202,000	7,777,000
Singapore FTA	77,494	77,494	7,777,000
Israeli Trade Act	50,000	–	–

* * * * *

PART 52–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.212-3 by revising the date of the provision; and paragraphs (g) (1) (i), (g) (1) (ii), and (g) (4) to read as follows:

52.212-3 Offeror Representations and Certifications– Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS–COMMERCIAL ITEMS
([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

(g) (1) Buy American Act–Free Trade Agreements–Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American Act–Free Trade Agreements–Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

* * * * *

(g)(4) Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American Act-Free Trade Agreements-Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

* * * * *

7. Amend section 52.212-5 by revising the date of the clause and paragraphs (b) (40) and (b) (41) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

(b) * * *

(40) (i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER]) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

(ii) Alternate I (MAR 2012) of 52.225-3.

(iii) Alternate II (MAR 2012) of 52.225-3.

(iv) Alternate III ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER]) of 52.225-3.

(41) 52.225-5, Trade Agreements ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER]) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

* * * * *

8. Amend section 52.225-3 by—

- a. Revising the date of the clause;
- b. Revising the definitions in paragraph (a) of "Bahrainian, Moroccan, Omani, or Peruvian end product" and "Free Trade Agreement country";
- c. Removing from paragraph (c) "Oman, and Peru" and "Omani, or Peruvian" (twice) and adding "Oman, Panama, and Peru" and "Omani, Panamanian, or Peruvian" (twice) in their places, respectively; and
- d. Amending Alternate III by—
 1. Revising the introductory text of Alternate III;
 2. Revising the introductory paragraph of the definition of "Bahrainian, Korean, Moroccan, Omani, or Peruvian end product" and removing from paragraphs (1) and (2) "Oman, or Peru" and adding "Oman, Panama, or Peru" in its place; and
 3. Removing from paragraph (c) "Oman, and Peru" and "Omani, or Peruvian" (twice) and adding "Oman, Panama, and Peru" and "Omani, Panamanian, or Peruvian" (twice) in their places, respectively.

The revised text reads as follows:

52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENT—ISRAELI TRADE ACT ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

(a) Definitions. As used in this clause—

Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, Panama, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

Free Trade Agreement country means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore.

* * * * *

Alternate III ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER]). As prescribed in 25.1101(b)(1)(iv), delete the definition of "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product" and add in its place the following definition of "Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product" in paragraph (a) of the basic clause; and substitute the following paragraph (c) for paragraph (c) of the basic clause.

Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product means an article that—

* * * * *

9. Amend section 52.225-4 by—

a. Revising the date of the provision;

b. Removing once from paragraph (a) and twice from paragraph (b) "Omani, or Peruvian" and adding "Omani, Panamanian, or Peruvian" in its place; and

c. Revising the date of Alternate III; and removing twice from paragraph (b) "Omani, or Peruvian" and adding "Omani, Panamanian, or Peruvian" in their places.

The revised text reads as follows:

52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT
CERTIFICATE ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

10. Amend section 52.225-5 by—

a. Revising the date of the clause;

b. Removing from paragraph (a), in the definition of "Designated country" in paragraph (2), "Oman, Peru," and adding "Oman, Panama, Peru," in its place.

The revised text reads as follows:

52.225-5 Trade Agreements.

* * * * *

TRADE AGREEMENTS ([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

11. Amend section 52.225-11 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (a), in the definition of "Designated country" in paragraph (2), "Oman, Peru," and adding "Oman, Panama, Peru," in its place; and

The revised text reads as follows:

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

* * * * *

12. Amend section 52.225-23 by—

- a. Revising the date of the clause; and
- b. Removing from paragraph (a), in the definition of "Designated country" in paragraph (2), "Oman, Peru," and adding "Oman, Panama, Peru," in its place; and removing from the definition of "Recovery Act designated country" in paragraph (2) "Oman, Peru," and adding "Oman, Panama, Peru," in its place.

The revised text reads as follows:

52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Act—Construction Materials under Trade Agreements.

* * * * *

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS--BUY
AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
([INSERT ABBREVIATED DATE OF PUBLICATION IN THE FEDERAL REGISTER])

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[BILLING CODE 6820-EP]

<FRDOC> [FR Doc. 2012–27906 Filed 11–19–12; 8:45 am]

<BILCOD>BILLING CODE 6820–14–P

[FR Doc. 2012-27906 Filed 11/19/2012 at 8:45 am; Publication Date:
11/20/2012]